

**BOARD OF APPEALS CASE NO. 5103**

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**BEFORE THE**

**APPLICANT: Marsha DeMario**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit a 6 foot high  
fence within the front yard; 104 Creekview Court,  
Street**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 11/29/00 & 12/6/00**

**HEARING DATE: January 17, 2001**

**Record: 12/1/00 & 12/8/00**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Marsha DeMario, is requesting a variance pursuant to Section 267-24B(1) of the Harford County Code, to permit a fence higher than 4 feet in the front yard (6 feet requested) in an AG/Agricultural District.

The subject parcel is located at 104 Creek View Court in the subdivision of Cherrywood Estates and is more particularly identified on Tax Map 25, Grid 2D, Parcel 220, Lot 14. The parcel consists of 2.0 acres, more or less, is zoned AG/Agricultural and is entirely within the Fifth Election District.

The Applicant, Marsha DeMario appeared and testified that she had the existing fence constructed without realizing she had made it higher than permitted. The witness explained that she owns a large dog that is a general neighborhood nuisance when it leaves its property to invade neighboring properties. The fence was constructed primarily to keep the dog in. There is a steep slope between the yard and the fence area which, if the fence were only 4 feet high, would only be about 2 feet below the height of the fence and could not constrain the animal. The witness felt that the configuration and height of the fence was dictated by the sloping topography and that it was a very aesthetically pleasing fence. She lives at the end of a cul-de-sac so there are no sight line issues associated with the fence. The witness felt a practical difficulty would result if the fence could not be at its existing height because she would be unable to construct a fence high enough to keep the dog in without moving the fence substantially back onto her property.

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While this would lower the fence height from 6 feet to 4 feet, the actual height of the fence from ground level would go up 4 additional feet because of the slope creating an eyesore and loss of usable property.

The Department of Planning and Zoning, in recommending approval of the application summarized the situation succinctly as follows:

“The Department finds that there are unique topographical conditions, which justify the height of the fence. The topography along the side lot lines near the front is very steep on the inside of the fence. Because of the changes in topography, the ground on the inside of the fence would only be 2-3 feet below the height of the fence if the height were reduced to 4 feet. The Applicant has tapered the fence to meet the height of the brick gate pillars so that the fence actually ranges in height from 4.5 feet to 6 feet within the area of the front yard setback. Because of the lot’s position at the end of the cul-de-sac, it does not pose a sight problem for ingress or egress of the adjoining lot. If granted, the variance will not create an adverse impact on the neighborhood or the intent of the Code.”

### **CONCLUSION:**

The Applicant, is requesting a variance pursuant to Section 267-24B(1) of the Harford County Code, to permit a fence higher than 4 feet in the front yard (6 feet requested) in an AG/Agricultural District.

Section 267-24B(1) of the Harford County Code provides:

“Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

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The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, “the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed(or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property’s uniqueness exists.” Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner agrees with the testimony of the Applicant and the Department of Planning and Zoning that the subject parcel has unique and unusual features, namely the very steep slope between the yard and the fence area. Additionally, the location of the property on a cul-de-sac, minimizes what might otherwise be problems with a 6 foot fence height including lines of sight. The Applicant has met her burden of persuasion as to the first step of the Cromwell analysis.

If the fence were moved back towards the residence, even though the fence height could be reduced, the overall height from ground level at the property line to the top of the

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fence would exceed the existing fence height by several feet. There is no adverse impact existing that would be mitigated by such a requirement. The Hearing Examiner, therefore, finds that a denial of the request would result in an unwarranted hardship and practical difficulty for the Applicant.

The Hearing Examiner recommends approval of the request, subject to the Applicant obtaining any and all necessary permits and inspections.

Date     JANUARY 26, 2001

William F. Casey  
Zoning Hearing Examiner